

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

RICHMOND DIVISION

In re

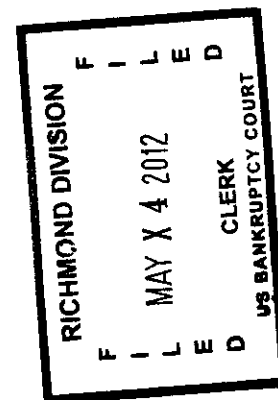
Circuit City Store, Inc. et al.,

Debtors.

Case No. 08-35653

Chapter 11

(Jointly Administered)



**MODESTO IRRIGATION DISTRICT'S RESPONSE TO LIQUIDATING
TRUST'S THIRTY-FIRST OMNIBUS OBJECTION TO CLAIMS (DISALLOWANCE
OF CERTAIN INVALID CLAIMS); AND REQUEST FOR HEARING THEREON**

Modesto Irrigation District ("Modesto"), by and through its attorneys, hereby by responds to the *Liquidating Trust's Thirty-Fist Omnibus Objection to Claims (Disallowance Of Certain Invalid Claims)*, (the "Objection", docket no. 11808). In support of its Response, Modesto respectfully submits the declaration of Donna O'Brien (the "O'Brien Declaration"), filed concurrently herewith, and the following:

I. BACKGROUND

1. On November 10, 2008 (the "Petition Date"), the debtors herein (the "Debtors") commenced the within bankruptcy cases by filing their voluntary petition for relief under the provisions of chapter 11 of the Bankruptcy Code. At that time, the Court entered its order allowing joint administration of the Debtors' bankruptcy cases.

2. Prior to the Petition Date, Modesto provided electricity to a retail/commercial facility of the Debtors located at 3401 Dale Road, Modesto, CA 95356. As of the Petition Date, a total of \$9,536.58 (the "Amount Owing") was due and owing by the Debtors to Modesto, as reflected in an excerpt of Modesto's accounting records attached to the O'Brien Declaration as **Exhibit "A."**

3. As confirmed in the O'Brien Declaration, Modesto did not hold any deposit or advance payment against which the Amount Owing could be, or was, offset.

4. Subsequently, Modesto filed claim no. 3363 in the amount of \$9,536.58, representing the Amount Owning (the "Claim").

5. After the Petition Date, at the Debtors' request, Modesto continued to provide services to the Debtors. The Debtors paid for postpetition services on an ongoing basis, and discontinued services with Modesto on March 20, 2009. There is no amount owing by the Debtors to Modesto for postpetition services. At no time did the Debtors make any payment to Modesto on account of, or in reduction of, the Amount Owning.

II. OBJECTION

5. The Objection seeks "to disallow certain invalid claims". According to the Objection, the books and records of the liquidation trust show that the Claim has been paid in full based on "pending deposits and/or post-petition overpayments on account." The Objection, however, does not set forth dollar amounts or offer any other details of the alleged deposit and overpayments.

6. In fact, as confirmed in the O'Brien Declaration, no such deposits or overpayments were received by Modesto at any time. In particular, Modesto has never held a deposit for the Debtors' account, either pre- or post-Petition Date, and whereas the Debtors paid postpetition charges on a current and ongoing basis, no excess- or over-payment was made to Modesto by the Debtors.

7. Modesto requests a hearing on this response to the Objection.

8. Any reply to this response should be directed to Modesto's attorney:

Merle C. Meyers, Esq.
Michele Thompson, Esq.
44 Montgomery Street, #1010
San Francisco, CA 94104
Tel: 415-362-7500
Facsimile: 415-362-7500
Email: Mthompson@mlg-pc.com

9. Modesto's attorney should be contacted regarding settlement of this matter.

III. CONCLUSION

Based on the foregoing, Modesto respectfully requests that the Court enter an order that (a) overrules the Objection, (b) allows the Claim as a general unsecured claim in the amount of \$9,536.58, and (c) grants such other and further relief as is just and proper.

DATED: May 2, 2012

MEYERS LAW GROUP, P.C.

By: /s/ Merle C. Meyers
CA Bar #66849
44 Montgomery Street, Suite 1010
San Francisco, CA 94104
Telephone: (415) 362-7500
Facsimile: (415) 362-7515
Attorneys for Modesto Irrigation District

CERTIFICATE OF SERVICE BY FIRST CLASS MAIL

I, the undersigned, state that I am employed in the City and County of San Francisco, State of California, in the office of a member of the bar of this Court, at whose direction the service was made; that I am over the age of eighteen years and not a party to the within action; that my business address is 44 Montgomery Street, Suite 1010, San Francisco, California 94104; that on the date set out below, I served a copy of the following:

**MODESTO IRRIGATION DISTRICT'S RESPONSE TO LIQUIDATING TRUST'S
THIRTY -FIRST OMNIBUS OBJECTION TO CLAIMS (DISALLOWANCE OF
CERTAIN INVALID CLAIMS); AND REQUEST FOR HEARING THEREON**

on each party in the manner listed below, addressed to each party listed below.

I declare under penalty of perjury that the foregoing is true and correct. Executed at San Francisco, California on May 2, 2012.

/s/ Michele Thompson
MICHELE THOMPSON

Via overnight delivery
Facsimile
Electronic mail

Jeffrey N. Pomerantz
Andrew W. Caine
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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

In re

Circuit City Store, Inc. et al.,

Debtors.

Case No. 08-35653

Chapter 11

(Jointly Administered)

DECLARATION OF DONNA O'BRIEN IN SUPPORT OF MODESTO IRRIGATION DISTRICT'S RESPONSE TO LIQUIDATING TRUST'S THIRTY-FIRST OMNIBUS OBJECTION TO CLAIMS (DISALLOWANCE OF CERTAIN INVALID CLAIMS)

I, DONNA O'BRIEN, declare:

1. I am the Customer Service Supervisor of Modesto Irrigation District ("Modesto"), a creditor in the above-captioned bankruptcy matter.

2. I am over the age of 18 years and have personal knowledge of each of the facts stated herein below, except as otherwise stated below, and would testify thereto if called upon to do so in a court of law.

3. Prior to the November 10, 2008 (the "Petition Date"), Modesto provided electricity to a retail/commercial facility of the Debtors located at 3401 Dale Road, Modesto, CA 95356. As of the Petition Date, a total of \$9,536.58 (the "Amount Owing") was due and owing by the Debtors to Modesto, as reflected in an excerpt of Modesto's accounting records (excluding internal accounting adjustments) attached hereto as **Exhibit "A."**

4. Modesto did not hold any deposit or advance payment against which the Amount Owing could be, or was, offset.

5. Modesto filed claim no. 3363 in the amount of \$9,536.58, representing the Amount Owing (the "Claim").

6. After the Petition Date, at the Debtors' request, Modesto continued to provide services to the Debtors. The Debtors paid for postpetition services on an ongoing basis, and discontinued services with Modesto on March 20, 2009. There is no amount owing by the

Debtors to Modesto for postpetition services. At no time did the Debtors make any payment to Modesto on account of, or in reduction of, the Amount Owning.

7. The Objection seeks "to disallow certain invalid claims". According to the Objection, the books and records of the liquidation trust show that the Claim has been paid in full based on "pending deposits and/or post-petition overpayments on account." The Objection, however, does not set forth dollar amounts or offer any other details of the alleged deposit and overpayments.

8. No such deposits or overpayments were received by Modesto at any time. In particular, Modesto has never held a deposit for the Debtors' account, either pre- or post-Petition Date, and whereas the Debtors paid postpetition charges on a current and ongoing basis, no excess- or over-payment was made to Modesto by the Debtors.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on May 1, 2012, at Modesto, California.

/s/ Donna O'Brien
DONNA O'BRIEN

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

In re

Circuit City Store, Inc. et al.,

Debtors.

Case No. 08-35653

Chapter 11

(Jointly Administered)

EXHIBIT "A"

**DECLARATION OF DONNA O'BRIEN IN SUPPORT OF MODESTO IRRIGATION
DISTRICT'S RESPONSE TO LIQUIDATING TRUST'S THIRTY-FIRST OMNIBUS
OBJECTION TO CLAIMS (DISALLOWANCE OF CERTAIN INVALID CLAIMS)**

Circuit City - acct 25000463895

Date Posted	Amount	Type	Running Balance	Bill Period	Date Billed	Date Due	Bill Month
10/09/09	-8,654.25	Payment	9,536.58				
03/28/09	2,687.02	Current Charge	18,190.83	03/09/09-03/26/09	03/28/09	04/13/09	03/27/09
03/10/09	5,967.23	Current Charge	15,503.81	02/09/09-03/08/09	03/10/09	03/30/09	03/09/09
02/24/09	-6,770.33	Payment	9,536.58				
02/10/09	6,770.33	Current Charge	16,306.91	01/09/09-02/08/09	02/10/09	03/02/09	02/09/09
01/23/09	-7,165.80	Payment	9,536.58				
01/10/09	7,165.86	Current Charge	16,702.38	12/08/08-01/08/09	01/10/09	01/30/09	01/09/09
12/22/08	-4,586.02	Payment	9,536.52				
12/09/08	4,585.96	Current Charge	14,122.54	11/11/08-12/07/08 (11/11 - 12/02 postpetition chgs due)	12/09/08	12/29/08	12/08/08
12/09/08	2,709.98	Current Charge	9,536.58	11/11/08-12/07/08 (10/29 - 11/10 prepetition chgs inc in BK)			
12/04/08	100.89	Fee	6,826.60	Late Fee Charges (prepetition chgs inc in BK)	12/09/08	12/29/08	12/04/08
11/12/08	6,725.71	Current Charge	6,725.71	10/08/08-11/10/08 (prepetition chgs inc in BK)	11/12/08	12/02/08	11/11/08
10/22/08	-10,022.47	Payment	0.00				
10/09/08	10,022.47	Current Charge	10,022.47	09/09/08-10/07/08	10/09/08	10/29/08	10/08/08
09/22/08	-9,344.77	Payment	0.00				
09/10/08	9,344.77	Current Charge	9,344.77	08/08/08-09/08/08	09/10/08	09/30/08	09/09/08
08/25/08	-10,111.67	Payment	0.00				
08/09/08	10,111.67	Current Charge	10,111.67	07/09/08-08/07/08	08/09/08	08/29/08	08/08/08
07/21/08	-9,571.60	Payment	0.00				
07/10/08	9,571.60	Current Charge	9,571.60	06/09/08-07/08/08	07/10/08	07/30/08	07/09/08
06/23/08	-9,449.19	Payment	0.00				
06/10/08	9,449.19	Current Charge	9,449.19	05/08/08-06/08/08	06/10/08	06/30/08	06/09/08
05/22/08	-6,477.73	Payment	0.00				
05/09/08	6,477.73	Current Charge	6,477.73	04/08/08-05/07/08	05/09/08	05/29/08	05/08/08
04/21/08	-5,515.64	Payment	0.00				
04/09/08	5,515.64	Current Charge	5,515.64	03/10/08-04/07/08	04/09/08	04/29/08	04/08/08
03/24/08	-5,731.15	Payment	0.00				
03/11/08	5,731.15	Current Charge	5,731.15	02/08/08-03/09/08	03/11/08	03/31/08	03/10/08
02/22/08	-5,664.95	Payment	0.00				
02/09/08	5,664.95	Current Charge	5,664.95	01/09/08-02/07/08	02/09/08	02/29/08	02/08/08
01/28/08	-5,966.90	Payment	0.00				
01/12/08	5,966.90	Current Charge	5,966.90	12/07/07-01/08/08	01/12/08	02/08/08	01/09/08